IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 4135 OF 2004
IN
MISC. CIVIL APPLICATION (Rest.) ST. NO. 12720 OF 2004
IN
WRIT PETITION NO. 2370 OF 2001

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 07, 2006.

Heard Shri Harsulkar, learned counsel for the applicant - petitioner and Shri Mishra, learned counsel for respondents No. 1 & 2. Respondent No.3 is a formal party.

The application is for condonation of delay of one year and 352 days in filing Misc. Civil Application for restoration by recalling the order dated 5.6.2002, dismissing the present writ petition in default.

Shri Harsulkar, learned counsel for the petitioner states that on 5.6.2002, when the matter was called out, the counsel engaged by the petitioner did not appear and ultimately the matter was

dismissed. He states that the petitioner was under the impression that writ petition is still pending hence, the petitioner approached him and on 22.4.2004 he filed Vakalatnama and thereafter the fact of dismissal came to his knowledge. He, therefore, prays for condonation of delay.

Shri Mishra, learned counsel for respondents No. 1 & 2 opposes the request. He contends that it is a case of clear negligence. He, further states that Shri Sheikh Sattar, Advocate of Chandrapur is still continuing on record and under the circumstances, the delay should not be condoned.

However, it is a matter of record that petitions remain pending for admission for two or more years and thereafter if dismissal of petition in default has come to the notice of learned counsel for the petitioner after two years, that too when new counsel was engaged and he filed Vakalatnama, it cannot be said to be an objectionable affair or an incorrect statement. No laches or negligence can be inferred on that count.

Under the circumstances, said delay is condoned subject to payment of cost of Rs.1,000/- to Respondents No. 1 & 2 by the applicant within a

period of four weeks from today.

If the costs are so paid, the delay shall stand condoned and office to register the Misc. Civil Application and list it for further consideration.

JUDGE

*GS.